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In re Application of
Thomas M. McCann, et al.
Application No. 09/747,070
Filed: December 22, 2000
Attorney Docket No. 1322/28/3

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ON PETITION

This is a decision on the petition, filed April 19, 2006 under 37 CFR 1.313(c)(2) to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **DISMISSED** as moot.

Unfortunately, the petition was not referred to the appropriate official for a decision until after April 25, 2006, the date upon which the above-identified application issued as U.S. Patent No. 7,035,239.


37 CFR 1.313(d) states that "A petition under this section [37 CFR 1.313(c)] will not be effective to withdraw the application from issue unless it is actually received and granted by the appropriate officials **before the date of issue.**" In this case, the petition was not received in the Office of Petitions for consideration until April 25, 2006. Therefore, the petition cannot be granted.

The inconvenience caused petitioner in this matter is sincerely regretted. However, applicants were cautioned to hand carry or fax petitions to withdraw from issue directly to the Office of Petitions to allow sufficient time to process the petition. (*See Revised Procedures for Papers Requiring Immediate Attention (Hand-Carried and Facsimile Transmissions)*, 1279 Off. Gaz. Pat. Office 149 (Feb. 24, 2004); *Revised Procedures for Papers Requiring Immediate Attention*, 1280 Off. Gaz. Pat. Office 917 (March 23, 2004).

The request for continued examination (RCE) filed concurrently with the petition is improper in view of the issuance of the instant application into a patent on April 25, 2006. The RCE and the

information disclosure statement (IDS) will remain in the file of the above-identified application without further consideration. See 37 CFR 1.97(I). The \$790 RCE filing fee paid on April 19, 2006 is being credited to counsel's deposit account.

Telephone inquiries concerning this decision may be directed to the undersigned at (571) 272-3204.


Sherry D. Brinkley
Petitions Examiner
Office of Petitions